

# **REPRESENTATIVE PAYEES**

## **I. WHAT IS A REPRESENTATIVE PAYEE?**

A representative payee is a person or organization authorized by the Social Security Administration (SSA) to cash and manage certain benefits checks - Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) - for a person deemed unable to do so. Federal regulations set out when the SSA will appoint a representative payee, and define the payee's responsibilities.

## **II. WHEN DOES SSA APPOINT A REPRESENTATIVE PAYEE?**

SSA policy states that all recipients have the right to manage their own payments. However, the local SSA office will appoint a representative payee if it determines that you cannot manage, or direct someone to manage, benefit payments in your own interest. A representative payee will be appointed if you are:

- legally incompetent (as determined by a court);
- mentally incapable of managing benefit payments;
- physically incapable of managing, or directing someone to manage benefit payments; or
- under age 18, unless you are applying for SSI or SSDI within seven months of turning 18, or you live on your own and have shown that you can manage the benefits.

SSA will look at court findings on competence, medical evidence, and statements of family, friends, or service providers to decide if you are capable of managing your funds.

The SSA may also require a representative payee for a person who has a substance abuse condition, but has been found independently disabled. Like other cases in which Social Security decides to appoint a representative payee, the person may appeal that decision.

## **III. HOW DOES SSA SELECT A REPRESENTATIVE PAYEE?**

An individual must apply to the SSA to be your representative payee. The SSA will decide who your representative payee will be.

In selecting a representative payee, SSA will consider:

- your relationship to the potential representative payee, if any;
- the amount of interest that the potential representative payee shows in you;
- any legal authority the potential representative payee has to act on your behalf;
- whether the potential representative payee has custody of you; and

- whether the potential representative payee is likely to know and look after your needs.

If you are over age 18 and have not been determined to need a payee on the basis of having a substance abuse condition,\* preference is given, in this order, to:

- a legal guardian, spouse or other close relative you live with, who has custody over you, or who demonstrates a strong concern for your welfare;
- a friend you live with or who demonstrates strong concern for your welfare;
- a public or nonprofit agency or institution (such as a nursing home or psychiatric hospital) which has custody of you (for a fee, paid by you);
- a private, profit-making institution, licensed under State law, which has custody of you (the institution may keep a large portion of your benefit check to pay your expenses);
- persons other than those listed above who are willing and able to serve as representative payee, e.g., members of community groups or organizations.

The order of preference, however, is flexible to accommodate SSA's desire to select the payee who will best serve your interests.

In general, people or institutions to whom you owe money may not be your representative payee. Exceptions exist for a creditor who is:

- related to you and living in your household;
- your legal guardian or representative;
- a licensed or certified care facility;
- a qualified organization which has incurred expenses by providing you with a representative payee and therefore authorized to collect a monthly fee from you;
- an employee, administrator, or owner of a licensed or certified care facility in which you live, only if Social Security has been unable to find an alternative representative payee;
- Any person Social Security deems appropriate based on a written determination.

The SSA must investigate and approve each applicant seeking to serve as representative payee. The SSA must keep a list of all representative payees, and be sure that certifying a particular person "is in the interest of" the recipient. Whenever practicable, a face-to-face interview must take place. The SSA must:

- obtain proof of the person's identity;

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\* The order of preference for representative payees for those who are disabled and have substance abuse conditions and is: a) State licensed or bonded non-profit organizations; b) a government agency whose goal "is to carry out income maintenance, social service or health care-related activities"; c) a State or local government agency with fiduciary responsibilities; d) A person who an agency appoints (other than a Federal agency) referred to in a, b, and c if appropriate; or e) a family member. . If the preferred payees are not available, SSA may appoint others like legal guardians, treatment providers, or even friends, if SSA's investigation shows them to be appropriate payees: If the recipient has no appropriate payee resources, SSA must provide some assistance, usually a referral from a list of local resources.

- verify the nominated payee's Social Security number or employer identification number;
- find out if the nominated payee is disqualified because he or she has been convicted of a "Social Security felony" or for another reason; and
- find out if the nominated payee has ever misused another recipient's funds.
- verify the payee applicant's employment and or direct receipt of Title II, VIII, or XVI benefits;
- verify the payee applicant's concern for the beneficiary with the beneficiary's custodian or other interested person;
- require the payee applicant to prove a relationship to the beneficiary and also describe his or her responsibility for the care of the beneficiary;
- determine whether the payee applicant is a creditor of the beneficiary.

After a representative payee has been selected, the SSA may, at any time, ask the payee to provide information showing that the payee's relationship with you continues, and that the payee is not mishandling your money. If the representative payee fails to respond within a reasonable time, the SSA may stop payments to the representative payee or select another person to serve as payee. The SSA will consider paying you directly if it decides to stop sending your payments to your representative payee. At the same time, SSA will look for a new payee.

If the SSA does not follow procedures to investigate and monitor the representative payee, and the payee misuses your funds, the SSA may be liable to you for the misused funds, and may have to pay you back.

#### **IV. WHO MAY NOT SERVE AS A REPRESENTATIVE PAYEE?**

Certain people who may not serve as representative payees include:

- persons convicted of a violation of the Social Security Act;
- persons who have received social security benefits through a representative payee;
- Those who have previously served as representative payees and misused social security benefits. However, if SSA decides to allow a previously served representative payee who has misused SSA benefits to be a representative payee again, then SSA must evaluate the representative payee's performance at least every 3 months until SSA is convinced that the representative payee poses no risk to the beneficiary's best interest. SSA may make exceptions on a case-by-case basis if all of the following are true:
  - ◆ situations where it is not in the best interest of the beneficiary to make direct payment of benefits to the beneficiary;
  - ◆ a suitable alternative representative payee is not available;

- ◆ it would be in the best interest of the beneficiary to select the representative payee applicant;
  - ◆ the SSA has information that indicates the applicant is now suitable to serve as a representative payee; and
  - ◆ the applicant has either repaid the misused benefits, or has a plan to repay them.
- Normally a creditor (a person who provides you with goods or services for consideration) may not serve as a representative payee. However, if a creditor does not pose a risk to you and his/her financial relationship with you presents no substantial conflict of interest the creditor may serve as a representative payee if he or she also is:
    - ◆ related to you and living in your household; or
    - ◆ your legal guardian or representative; or
    - ◆ a licensed or certified care facility; or
    - ◆ a qualified organization which has incurred expenses by providing you with a representative payee and therefore authorized to collect a monthly fee from you; or
    - ◆ an employee, administrator, or owner of a licensed or certified care facility in which you live, only if Social Security has been unable to find an alternative representative payee.

## V. WHAT ARE THE DUTIES OF A REPRESENTATIVE PAYEE?

Once appointed and certified, the representative payee must determine from you what you need. The benefit checks will be sent to the payee, who will endorse and deposit them in a separate bank account for you. The payee should make payments on your behalf from this account. The representative payee should keep accurate records and retain all bills, receipts and canceled checks. If you receive SSI, the representative payee must make sure that your savings do not go over the \$2000 limit for an individual or \$3000 for a member of a married couple. This could make you ineligible for SSI.

A representative payee must spend SSI and SSDI funds\*\* only for your benefit. The representative payee must act in your *best interest*, taking into account your individual requirements and particular circumstances.

The spending priorities are:

- items for your basic maintenance (food, clothing, shelter, utilities, personal care, medical and dental care, education, personal comfort items, etc.);

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\*\* The representative payee has authority **only over income from the Social Security program** for which the payee has been appointed. For example, if you get SSI, your payee may not control your bank account if it contains funds from other sources, or even SSI funds received before the payee was appointed. A representative payee may not make personal decisions on your behalf or make financial decisions about your personal property or real estate. The powers of a representative payee are more limited than those of either a conservator or a guardian.

- reasonably foreseeable needs (rehabilitation services, expenses for transfer, etc.);
- basic subsistence costs for any legal dependents which are not paid by other sources (AFDC, Social Security, etc.);
- saving and investing;
- payment of debts. (Please note: SSI and SSDI funds cannot be taken by someone else to pay most debts, except paying the SSA back for overpayments, Internal Revenue Service levies for the collection of unpaid federal taxes, or court-ordered garnishments for the enforcement of child support and/or alimony obligations.)

Medical expenses also should be paid, but only what is not covered by other sources such as Medicaid, Medicare or the free care pool. **If you are on SSI and in an institution that does not accept Medicaid, the representative payee should prioritize basic needs and items that will aid in your recovery or release, as well as provide money to improve your general condition, such as giving you canteen money. If the institution accepts Medicaid, then Medicaid should pay the institution's costs, and SSI may only be used for personal needs.**

If you are in an institution, your representative payee may spend Social Security money to maintain your home unless:

- you have no dependents living there;
- you have been gone for six months or more; and
- a doctor certifies that it is unlikely that you will return home.

The representative payee must be able to account for your funds and must file, at a minimum, an annual report with the local SSA office describing how the money was spent. A parent or spouse who is your representative payee and lives with you does not have to file these annual financial reports.

Representative payees must establish "special needs accounts" for minors whose retroactive payments are more than six times the maximum benefit. These amounts may only be used for certain expenses, which are related to the child's disability and which benefit the child, such as education, personal needs assistance, and special equipment. The rules remain in effect after the minor turns 18, even if there is no longer a representative payee.

## **VI. HOW DOES YOUR REPRESENTATIVE PAYEE ACCOUNT FOR THE USE OF BENEFITS?**

Your representative payee will be required to submit annual written reports to SSA. In order for SSA to confirm how your representative payee is using funds, the payee should keep records of how benefits were used in order to make accounting reports and make those records available upon request. SSA may request the following information from your representative payee:

- where you lived during the accounting period;

- who made the decisions on how your benefits were spent or saved;
- how your benefit payments were used; and
- how much of your benefit payments were saved and how the savings were invested.\*

## **VII. WHO IS LIABLE IF YOUR REPRESENTATIVE PAYEE MISUSES YOUR BENEFITS?**

- The representative payee is responsible for paying back your benefits if he/she misuses them. SSA will make every reasonable effort to obtain restitution of misused benefits in order to repay these benefits to you.
- SSA will repay benefits in cases where they have determined that a representative payee misused benefits and the payee is serving 15 or more beneficiaries. SSA will pay you or your alternative representative payee when it makes restitution, an amount equal to the misused benefits less any amount SSA collected from the misuser and repaid to you.
- SSA will repay benefits if it committed “negligent failure” in its investigation or monitoring of your representative payee that results in misuse of your benefits by an individual payee who is serving no more than 14 beneficiaries. SSA will pay you or your alternative representative payee when it makes restitution an amount equal to the misused benefits less any amount SSA collected from the misuser and repaid to you.
- “Negligent failure” means that SSA has failed to investigate or monitor a representative payee or that SSA did investigate or monitor a representative payee but did not follow established procedures in its investigation or monitoring. Examples of SSA’s negligent failure include, but are not limited to the following:
  - ◆ SSA did not follow its established procedures when investigating, appointing, or monitoring a representative payee;
  - ◆ SSA did not timely investigate a reported allegation of misuse;
  - ◆ SSA did not take the necessary steps to prevent the issuance of payments to the representative payee after it was determined that the payee misused benefits; or
  - ◆ SSA’s repayment of misused benefits under these provisions does not alter the representative payee’s liability and responsibility.

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\*Amendment to Part G of Sec. 404.2041 and 415.641 to the Representative Payment rules under Titles II, VIII, and XVI of the Social Security Act.

## **VIII. RECIPIENTS WHO ARE IN INSTITUTIONS**

There are several problems that may arise when institutions rather than individuals act as representative payees. While the following practices are not illegal, they create problems for beneficiaries:

- The SSA automatically designating the institution as your representative payee when you are admitted, even if you already have one;
- the institution paying itself first for your "maintenance," then giving whatever is left over to you;
- the institution pooling your money with that of other Social Security recipients under its care in one bank account and not awarding you interest;
- the institution remaining your representative payee after you leave.

However, it is illegal when the institution:

- does not first use benefits for your needs;
- uses your SSI money to pay its costs if you have Medicaid or other insurance that will pay, or takes more from your payments than the state allows;
- pays for maintenance, such as cleaning or repairs to the facility;
- pays for improvements to the facility, such as buying new beds or carpeting the activity room;
- pays for items that are supposed to be part of the basic fee, such as sheets and towels;
- pays itself for any debts you owe unless there is money left over after your monthly costs are taken care of and the SSA has approved the payment.

## **IX. HOW DOES ONE OBJECT TO THE APPOINTMENT OF A REPRESENTATIVE PAYEE OR REMOVE OR CHANGE A REPRESENTATIVE PAYEE?**

Unless you are a minor living with parents or guardian or are legally incompetent, the SSA must give you notice that it intends to appoint a representative payee. You may object to either the decision to appoint a representative payee or the person the SSA chooses. SSA will provide advance written notice to the beneficiary before actually appointing the payee. This notice will afford the beneficiary an opportunity to appeal the representative payee appointment. The advance notice will:

- explain the right of the beneficiary to appeal the determination that a representative payee is necessary;
- explain the right to appeal the choice of a particular person to serve as the representative payee of the beneficiary; and

- explain the right to review the evidence upon which the choice of payee designation is based, and to submit additional evidence.

To appeal, you must file a written statement with the local SSA office. If your first appeal is denied, you may ask the SSA to reconsider. If you are not satisfied with the reconsideration decision, you may request a hearing before an administrative law judge.

If you no longer want a representative payee, you may ask the local SSA office to pay the benefits directly to you. Be prepared to present evidence that you are capable of handling your benefits. Such evidence may include a note from a doctor or therapist stating that you can manage money, or bills and receipts showing that you have "responsibly" spent whatever funds you were given by the payee.

If the payee misuses your funds or there is a more appropriate payee available, these are acceptable reasons for **changing** the representative payee.

#### **X. HOW DOES ONE CHALLENGE A DECISION BY A REPRESENTATIVE PAYEE WHO REFUSES TO INCREASES PAYMENTS ACCORDING TO THE WISHES OF A BENEFICIARY?**

As described in Section V, payees must manage a beneficiary's payments consistent with spending priorities.

When a representative payee refuses to increase payments as a beneficiary requests, the beneficiary should think about whether the payee is following these priorities. If the beneficiary believes the payee is not, the beneficiary may call SSA at 1-800-772-1213 and register a complaint. SSA will contact the beneficiary's local SSA office. The local SSA will then contact the beneficiary and attempt to resolve the problem. If beneficiary is not satisfied he/she may file an appeal to have the representative payee removed.

#### **XI. FOR MORE INFORMATION ABOUT SOCIAL SECURITY AND REPRESENTATIVE PAYEES:**

For information and legal advice regarding Social Security and representative payees, contact your local legal services office (the Legal Advocacy and Resource Center, at 617-742-9179, can give you the telephone number), the Disability Law Center (800-872-9992), the Center for Public Representation (413-584-1644 or 617-965-0776). For general information about disability issues, call the Mass. Network of Information Providers for People with Disabilities (800-642-0249) or the Mass. Office on Disability (800-322-2020).

Social Security has a toll-free number (800-772-1213) for information. Write down the name of the person you speak to, the date and time you called, and what they said.

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